

Article 12:

BOARD OF ZONING APPEALS

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A. Composition:

1. There shall be a Board of Zoning Appeals (hereinafter called the "Board") which shall consist of five (5) members, each to be a resident of the Town and each to be appointed by the Circuit Court of Isle of Wight County for terms of five (5) years, except the original appointments shall be made for such terms that the term of one member shall expire each year. Members shall hold no other public office except that one member may be a member of the Town's Planning Commission.
2. A member whose term expires shall continue to serve until a successor is appointed and qualifies.
3. Vacancies to the Board shall be filled by such Circuit Court for the unexpired portion of the term.
4. A member may be removed by such Circuit Court for cause, upon written charges and after a public hearing.
5. Each member shall receive such compensation as the Town Council may authorize for attendance at each regular or called meeting of the Board held at least fifteen (15) days after proper public notice.
6. Within the limits of funds appropriated by the Town Council via its annual budgeting process, the Board may employ or contract for legal services, technical services, secretaries, clerks and other advisory services.

B. Organization:

1. The Board shall elect one of its members as chairman and one of its members as vice-chairman who shall serve annual terms as such and may succeed themselves. The chairman shall preside at all meetings of the Board and in the chairman's absence the vice-chairman shall preside.

2. The Board shall appoint a recording secretary whose duty it shall be to keep the minutes and other record of the actions and deliberations of the Board and perform such other ministerial duties as the Board shall direct. A secretary who is not a member of the Board shall not be entitled to vote on matters before the Board. The recording secretary may receive such compensation as the Town Council may authorize for attendance at each regular or called meeting of the Board.

C. Procedure:

1. The Board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the Town and general laws of the state as it may deem necessary in order to carry into effect the provisions of this chapter, said rules to be in writing and copies available to the public at the office of the Planning and Zoning Administrator and the recording secretary of the Board.
2. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such chairman, or in the chairman's absence the vice-chairman.
3. A regular member when he knows he will be absent from a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact.
4. All meetings of the Board shall be open to the public.
5. The recording secretary shall keep minutes of the Board's proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of the Board's examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
6. A quorum of the Board shall consist of three (3) Board members, one of which shall be either the chairman or the vice-chairman.
7. The Board shall keep a full public record of its proceedings and other official actions and shall submit a report of its activities to the Town Council at least one each year.

D. Powers of Board of Zoning Appeals:

The Board of Zoning Appeals shall have the following powers and duties:

1. **Variances:** To authorize upon appeal or original application in specific cases a variance from the application of the strict terms of this ordinance, provided that such variance will not be contrary to the public interest, when owing to special conditions a literal enforcement of the provisions of this chapter will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and that substantial justice done as hereinafter specified.
2. **Special Exceptions:** To hear and decide applications for special exceptions for uses, yards and heights as may be specifically authorized in this article. The Board may impose such conditions relating to the use, yard or height for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be in compliance. No special exception may be granted except after a public hearing in accordance with section "J." of this ordinance.
3. **Administrative Appeals:** To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this Article or of any ordinance adopted pursuant thereto.
4. **Zoning Map Interpretation:** To hear and decide applications for interpretation of the zoning district map where there is any uncertainty as to the location of a district boundary.
5. **Appeals of Planning and Zoning Administrator Decisions:** To hear and decide appeals from the decision of the Planning and Zoning Administrator. No such appeal shall be heard except after a public hearing in accordance with this ordinance.
6. **No Power to Rezone:** No provision of this section shall be construed as granting any Board the power to rezone property.
7. **Revocation of Permit:** To revoke a special exception if the Board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after a public hearing in accordance with with section "J." of this ordinance.

E. Variances:

The Board shall have the power in specific cases to grant a variance from the application of the strict application of the terms of this ordinance under the following provisions:

1. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.
2. No such variance shall be authorized by the Board unless it finds:
 - a. That the strict application of the ordinance would produce undue hardship.
 - b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
 - d. That the condition or situation of the property concerned is not of so general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
3. No such variance shall be authorized except after a public hearing in accordance with section "J." of this ordinance.
4. In authorizing a variance the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or performance bond to ensure that the conditions imposed are being and will continue to be complied with.

5. After the Board has approved a variance, the variance so approved or granted shall lapse after one year period or such longer period of time as may be approved for "good cause: by the Board, provided that no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted.
6. The procedure for amendment of a variance already approved, or the request for a change of conditions attached to an approval, shall be the same as for the new application, except that, where the administrator determines the change to be minor relative to the original approval, the administrator may transmit the same to the Board with the original record without requiring that a new application be filed.

F. Special Exceptions:

1. The Board shall have the power in specific cases to grant a special exception for special use, area, and yard exceptions from the application of the terms of this ordinance under the following provisions:
 - a. to provide for adjustments in the relative locations of uses and buildings of the same or different classifications,
 - b. to promote the usefulness of these regulations as instruments for fact finding, interpretations, application and adjustment, and
 - c. to supply the necessary elasticity to efficiently administer these regulations.
2. In considering an application for a special exception, the Board shall give due regard to the specific guidelines and standards of this ordinance, and to the nature and conditions of adjacent uses and structures as well as the probable effect upon them of the proposed special exception.
3. The Board shall take into account the special characteristics, design, location, construction, method of operations, effect on traffic conditions or any other aspects of the particular use or structure, that may be proposed by the applicant.
4. If the Board finds that the proposed establishment or use will not adversely affect the health, safety or welfare of persons residing or working on the premises or in the neighborhood, will not unreasonably impair an adequate supply of light and air to

adjacent property, nor increase congestion in the streets, nor increase public danger from fire or otherwise unreasonably affect public safety, nor impair the character of the district or adjacent districts, nor be incompatible with the general plans and objectives of the Town's Comprehensive Plan, nor be likely to reduce or impair the value of buildings or property in surrounding areas, but that such establishment or use will be in substantial accordance with the general purpose and objectives of this ordinance, the Board shall grant the exception and authorize the issuance of a special exception permit.

5. In those instances where the Board finds that the proposed use may be likely to have an adverse effect as above, the Board shall determine whether such effect can be avoided by the imposition of any special requirements or conditions with respect to location, design, construction equipment, maintenance, or operation, in addition to those expressly stipulated in this ordinance.
6. Special exception uses: The following buildings and uses are permitted as special exceptions under the terms and conditions specified hereinabove:
 - a. A garage or other building accessory to a single family dwelling which building does not comply with the regulations of the district in which it is located.
 - b. Extension of a nonconforming use in a building so as to increase floor area by not more than twenty-five (25) percent.
 - c. Restoration, repair or replacement of a nonconforming use damaged by more than fifty (50) percent of the fair market value of the building immediately prior to its damage.
 - d. Temporary uses and structures in any district not specifically listed in the regulations and determined by the Board to be in the public interest for the district in which located; provided that such uses be of a temporary nature and do not involve the erection of substantial buildings. Such use or structures shall be authorized by the issuance of a temporary and revocable permit for not more than a twenty-four month period subject to such conditions as will safeguard the public health, safety and welfare.
7. Special exceptions for uses: The following yard conditions are permitted as special exceptions under the terms and conditions specified hereinabove:

- a. An exception in the yard regulation on a lot where on the adjacent lot there is a front, side, or rear yard that does not conform with such yard regulations in a way similar to the exception applied for, provided that the granting of such an exception will not cause the yard or use to encroach upon an existing or proposed right of way.
 - b. An exception in the depth or a rear yard on a lot, in a block where there are nonconforming rear yards.
 - c. An exception to a yard where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two intersection streets, so that any one of the existing depths shall, for a building hereafter constructed or extended be the required minimum front yard depth.
 - d. Construction of a single family dwelling with reduced yard spaces on a legal nonconforming lot.
8. After the Board has approved a special exception, the special exception so approved or granted shall lapse after a one year period or such longer period of time as may be approved for "good cause" by the Board, provided that no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted.
 9. The procedure for amendment of a special exception already approved, or the request for a change of conditions attached to an approval, shall be the same as for the new application, except that, where the administrator determines the change to be minor relative to the original approval, the administrator may transmit the same to the Board with the original record without requiring that a new application be filed.

G. Conditions of Approvals:

The Board may attach conditions to the granting of a variance or the approval of a special exceptions. In establishing adequate and necessary conditions, the Board may consider, among others, the following elements with respect to potential inclusion, modification, exclusion or limitation:

1. Placement of signs and advertising structures.

2. Signs: size, number, type, color, location or illumination.
3. Outdoor lighting: illumination intensity, direction, location, shielding.
4. Parking and loading: location, size, number.
5. Cleaning and painting.
6. Roof type.
7. Construction materials.
8. Construction phasing.
9. Exits, entrances, doors and windows.
10. Landscaping and screening.
11. Paving and site improvements.
12. Operating times.
13. Architectural facades.
14. Structural changes.
15. Smoke, dust, gas, noise and vibrations.
16. Termination of use due to use lapse or other conditions.

H. Procedure on Applications and Appeals:

1. Application for Special Exceptions and Variances

- a. Applications to the Board for special exceptions and variances in which the Board has original jurisdiction under this chapter may be made by any property owner, tenant, government official, department, Board or agency. Such application shall be made to the Board of Zoning Appeals on forms which shall

be provide for the purpose in accordance with rules which shall be adopted by the Board.

- b. All information, including maps and plans required by such forms, or otherwise required by the Board in order that it might be fully informed, shall be furnished by the applicant.
- c. It shall be the responsibility of the recording secretary of the Board to place the matter on the Board meeting agenda.
- d. The Planning and Zoning Administrator shall also transmit a copy of the application to the Planning Commission which may send a recommendation to the Board or appear as a party at the hearing.
- e. If a request for a variance or special exception has been denied by the Board, a request in substantially the same form shall not be considered by the Board within one (1) year of the date of denial.
- f. The procedure for amendment of a special exception or variance already approved, or a request for a change of conditions attached to an approval, shall be the same as for for a new application except that where the Planning and Zoning Administrator determines the change to be minor relative to the original approval, the Planning and Zoning Administrator may transmit the same to the Board with the original record without requiring that a new application be filed.

2. Appeals:

- a. An appeal may be taken to the Board by any person aggrieved or by any officer, department, Commission, Board or agency of the Town affected by any decision of the Planning and Zoning Administrator, or from any order, requirement, decision or determination made by any other officer in the administration or enforcement of this chapter or any ordinance adopted pursuant thereto.
- b. Any written notice of a zoning violation or a written order of the Planning and Zoning Administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty (30) days. The appeal period shall not commence until the statement is given to the recipient.

- c. An appeal shall be taken within thirty (30) days after the decision appealed by filing with the administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Planning and Zoning Administrator shall forthwith transmit to the recording secretary of the Board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or a Court of record, on application and on notice to the Planning and Zoning Administrator for good cause shown.

3. Hearing and Decision:

- a. The Board shall fix a reasonable time for a public hearing on an application or appeal. The Board shall decide upon the application or appeal within 90 days of its filing.
- b. Upon the hearing any party may appear in person, or by agent, or by attorney, before the Board. In exercising its powers, the Board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify, any order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.
- c. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variance from this article.

4. Proceedings to Prevent Construction of Building in Violation of Zoning Ordinance:

In any case where the administrator has certified conformity with the provisions of this chapter and a building permit has been issued and construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, suit may be filed within fifteen (15) days

after the start of construction by a person who had no actual notice of the issuance of such permit.

The Circuit Court may hear and determine issues raised in the litigation even though no appeal was taken from the decision of the administrator to the Board of Zoning Appeals.

5. Filing Fees:

- a. All persons, firms or corporations appealing to the Board of Zoning Appeals necessitating the publication of notices in the newspaper shall be required to pay, at the time the application is submitted, a fee as established by Town Council for expenses relative thereto.
- b. All persons, firms or corporation applying for variances under the provisions of this chapter or applying for an amendment or a variance already approved necessitating the publication of notices in the newspaper shall be required to pay, at the time the application is submitted, a fee as established by Town Council for expenses relative thereto.
- c. The payment of such money in advance to the office of the administrator as specified shall be deemed a condition precedent to the consideration of such appeal, variance request or requested amendment to a variance already approved.

I. Appeals to Circuit Courts:

Any person or persons jointly or severally aggrieved by any decision of the Board, or any taxpayer or any officer, department, Commission, Board, or agency of the Town, may present to the Circuit Court of Isle of Wight County a petition specifying the ground on which aggrieved within thirty days after the filing of the decision in the office of the Board. The proceedings before the Circuit Court shall be in accordance with applicable state law.

J. Notice and Hearing Requirements:

No variance or special exception may be authorized except after notice and hearing as required by Section 15.2-2204 of the Code of Virginia. This same notification and hearing requirement applies to the revocation of a special exception, the appeal of decisions made by the Planning

and Zoning Administrator and the application for interpretation of the Town Zoning District Map where there is any uncertainty as to the location of a district boundary. As is stated in 15.2-2204 of the Code of Virginia, each of these planning actions listed above need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The Planning Commission shall not recommend nor the Town Council authorize any such variance, special exception or other amendment thereof until notice of intention to do so has been published once a week or two successive weeks in some newspaper published or having general circulation in the locality; however, the notice of both the Planning Commission and the Town Council may be published concurrently. The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than six days nor more than twenty-one days after the second advertisement appears in such newspaper. The Planning Commission and the Town Council may hold a joint public hearing after public notice as set forth hereinabove.